88-845

NO. _____

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

October Term, 1988

JOHN W. (MIKE) BIBB
JUDY E. BIBB

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

John W. (Mike) Bibb
Judy E. Bibb
P.O. Box 215
Safford, Arizona 85546
(602) 428-5633

November 18, 1988

IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1988

John W. (Mike) Bibb
Judy E. Bibb

Petitioners,

vs.

United States of America,

Respondent.

ON WRIT OF CERTIORARI TO
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John W. (Mike) Bibb
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QUESTIONS PRESENTED FOR REVIEW

1) Whether the District Court's failure to comply with the provisions of Title 18, United States Code, Rule 17.1 and Rule 57, severely prejudiced Petitioners' defense, by conducting pretrial conferences and/or hearings in which Respondent's motions were granted, Defense subpoenas were quashed and Defense witnesses and evidence ruled against violated not only fundamental rules of criminal procedure but also adversely affected Petitioners' right to expect their trial to be managed in strict accordance with long established principles of constitutional due process of law?

2) Whether Petitioners' as citizens of the United States, have the constitutional right to expect and receive a trial in accordance with established rules of criminal procedure and due process of law?

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OPINIONS AND JUDGMENT BELOW

Petitioners' were convicted in District Court, Tucson, Arizona before Hon. Alfredo C. Marquez. Petitioners' were charged with three felonies and four misdeameanors:

COUNTS I, II, IV and VI - FAILURE TO FILE TAX RETURNS

COUNTS III, V and VII - ATTEMPT TO EVADE OR DEFEAT TAX

Trial commenced May 27, 1987 and concluded the following day, May 28, 1987. Sentencing was pronounced October 13, 1987.

Said Order and Judgment were affirmed on Appeal by the Ninth Circuit Court of Appeals on August 11, 1988 (Appendix, p. A 2) and Rehearing was denied on October 3, 1988 (Appendix, p. A 3).

Petitioners' then timely submitted this Petition for Writ of Certiorari.

JURISDICTION

Petitioners' were convicted in a criminal trial in Federal District Court of alleged violations of 26 U.S.C., Sections 7201 and 7203. Sentencing took place on October 13, 1987 before Hon. Alfredo C. Marquez.

A timely filed Appeal to the United States Court of Appeals for the Ninth District was denied on August 11, 1988 (Appendix, p. A 2). A timely filed Petition for Rehearing was denied on October 3, 1988 (Appendix, p. A 3).

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS & FEDERAL & STATE STATUTES

Fifth Amendment, U.S. Constitution . . . A 9

Sixth Amendment, U.S. Constitution . . . A 9

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STATEMENT OF THE CASE

The events - indictment, arrest, incarceration, trial, conviction and sentencing in this Case - occurred between the dates of March 4, 1987 and October 13, 1987.

On March 4, 1987, a criminal indictment was returned against Petitioners John W. (Mike) Bibb and Judy E. Bibb, husband and wife. John Bibb was charged in Count One with failing to file an income tax return in alleged violation of 26 U.S.C. 7203 and in Counts Three, Five and Seven with attempting to evade and defeat a tax in alleged violation of 26 U.S.C. 7201. Judy E. Bibb was charged in Counts One, Two, Four and Six with failure to file an income tax return in alleged violation of 26 U.S.C. 7203. These violations were alleged to have occurred from 1980 to 1983.

A summons was issued for the Bibbs upon return of the indictment. Both Petitioners

refused to respond to the summons, instead informing the court - through the Graham County Sheriff's Office, the county of the Petitioners' residence - that they would be available for arrest should the court desire to pursue this course of action. A few days later bench warrants were issued, Petitioners were arrested and arraignment was held before U.S. Magistrate Raymond Terlizzi on March 20, 1987.

After being released on bond, Petitioners were ordered by the Magistrate to appear before Federal District Judge Alfredo C. Marquez the following Monday, March 23, 1987.

The Petitioners, representing themselves, did not enter a plea to the charges against them. Judge Marquez, over Petitioners' objections, entered a plea of "not guilty" and set trial date.

At least two, and possibly more, pretrial

conferences and/or hearings were requested by the government and numerous motions submitted to the District Court by Respondents were heard and approved. Petitioners did not submit any motions nor ask the District Court to grant any special requests. Likewise, Petitioners were not represented by counsel nor were they lawfully required to attend these pretrial conferences.

At trial, Petitioners attempted to raise the defense that they were not required, by law, to file tax returns or pay "income taxes" on their wages, as their wages were not defined as being "income" but "remuneration" according to 26 U.S.C. 3401(a). The word "income" is not used to define "wages" in this section (Appendix A, page A 1).

Additionally, IRS Special Agent Glenn P. Smith had previously informed Petitioners by letter (October 16, 1984) that the filing of tax returns was "voluntary." This letter was

confirmed at trial by Agent Smith (Trial Transcript, p. 307 and copy of same included in Petitioners' Opening Brief to the Ninth Circuit Court of Appeals, p. A-9). IRS employee Lee Hansen also testified that the so-called "tax liability" for an individual is a "voluntary assessment" (Trial Transcript p. 182) and that submitting them was also a "voluntary" act (Trial Transcript, p. 183, 186, 196, 213).

The District Court effectively ignored or suppressed these arguments, either through granting Respondent's pretrial motions, or quashing Petitioners' subpoenas, or denying Petitioners' adequate opportunity to introduce controverting proof and question witnesses without witnesses' testimony being restricted by the court. The government was permitted over a day to present their case; the Bibb's defense was limited to less than two hours.

Also, during the trial Defendant John Bibb was held to be in criminal "contempt of court" and sentenced to serve ten days in a federal prison in Tucson. He was incarcerated into what was called an "Administrative Detention Cell"(solitary), and only permitted brief periods of exercise and a supervised shower every two days. No hearing or trial was conducted by the District Court regarding Mr. Bibb's alleged contempt.

Following guilty verdicts by the jury on all counts, Petitioners were sentenced on October 13, 1987. Petitioners were sentenced to five years supervised probation; fined $12,000; $1900 court costs; and $200 "special assessment;" and ordered to file all past and future income tax forms.

From that judgment and sentence Petitioners' filed timely appeal to the Ninth

Circuit Court of Appeals. The judgment of the District Court was upheld (Appendix A, page 2), and a rehearing was also denied (Appendix A, page 3).

Petitioners' had requested findings of fact and conclusions at law to support the opinions of the lower courts but no such information has been received by Petitioners to date.

REASON FOR GRANTING CERTIORARI

The District Court's course of action in this particular Case infringed upon Petitioners' constitutional right to be tried in strict accordance with congressionally established criminal rules of procedure and due process of law.

First, as Petitioners' were criminally indicted for alleged crimes against the United States, these alleged crimes should have been found in 18 U.S.C. However, search as one may, no such crimes alleged to have been committed by the Petitioners are listed in the Criminal Code. Respondent maintains 18 U.S.C. 3231 grants the District Court jurisdiction in this Case. While the District Court does, indeed, enjoy original jurisdiction "of all offenses against the laws of the United States," the alleged offenses of the Petitioners are not included among the list of "crimes" found

in 18 U.S.C. 26 U.S.C. contains the income tax "crimes" alleged to have been committed by the Petitioners. 26 U.S.C. is merely "prima facie evidence" of the laws and is not "positive law." Therefore, Petitioners were criminally tried in a Title 18 court for being in alleged violation of Title 26 prima facie regulations.

Second, since a criminal proceeding was instituted against Petitioners, the District Court was obligated to adhere to the Rules of Criminal Procedure as specifically required by 18 U.S.C., Rule 1 and Rule 57. The District Court was not at liberty to implement any rules contrary to 18 U.S.C. requirements.

Third, as Petitioners were not represented by counsel, and made this point manifestly clear to the court on several occassions, the Trial Judge continued to ignore this fact and conducted several pretrial conferences or

hearings without benefit of Petitioners' presence, all of which patently violated provisions of 18 U.S.C., Rule 17.1. These pretrial conferences were conducted solely for the purpose of granting motions submitted to the court by the government. The court's approval of these motions prejudiced Petitioner' defense by preventing the admission of evidence which would have contributed credence to Petitioners' defense.

Fourth, since the Trial Judge limited Petitioners' defense to what was called the "Good Faith Defense," Petitioners should have been permitted to produce evidence, call witnesses and cite laws which would have helped to corroborate their "Good Faith" beliefs. Judge Marquez forbid such entry of defense material when he ruled against it in a pretrial conference. Consequently, Petitioners' good faith defense was futher restricted to only personal testimony and not

allowed to substantiate this testimony via the introduction of supportive evidence, documentation, law and witnesses. Of the few witnesses permitted to testify for the defense, their testimony was severely censored to such a degree by the court as to be rendered virtually ineffectual. A quick check of the Trial Transcript as to the unusual brevity of time allowed to the defense portion of the trial will easily verify this. Of a 459 page Trial Transcript, only about 30 pages are recorded with Petitioners' witness testimony (pp. 335 to 364). This, in spite of the fact the court had just made comment that the "Defendants are entitled to present any evidence that they wish to present, if they want to" (Trial Transcript, p. 334, line 22).

The District Court's treatment of Petitioners has given new meaning to the word "fairness." Unfortunately for the court

its behavior is not in keeping with traditional rules of criminal procedure or due process of law-

> Fair Trial: "A trial before an impartial judge, an impartial jury, and in an atmosphere of judicial calm. In such a trial the judge may and should direct and control the proceedings, and may exercise his right to comment on the evidence, yet he may not extend his activities so far as to become in effect either an assisting prosecutor or a thirteenth juror."
>
> Goldstein v. U.S., C.C.A.Mo., 63 F.2d 609, 613

Since Petitioners' were required to adhere to the rules of procedure, and Defendant John Bibb being ordered to prison for his alleged failure to comply with these rules, then by the same token the District Court should also have been held equally accountable to these very same rules. U.S.C. 18 mandates it.

DID THE DISTRICT COURT'S FAILURE TO COMPLY WITH U.S.C. 18, RULES 17.1 & 57 PREJUDICE PETITIONERS' DEFENSE?

In a federal criminal proceeding, an individual charged with having committed crime against the United States has the absolute right, under the 5th Amendment, to expect to receive from his trial court a strict adherence to the fundamental rules of criminal procedure and required constitutional due process of law before he can lawfully be "deprived of life, liberty, or property."

This procedure, at law, cannot be altered or modified or inbred with other rules of procedure in attempting to make the prosecution of an individual more compatible with contemporary justice. The trial judge in a criminal proceeding is obligated by his oath of office to uphold these laws and the rules of criminal procedure - U.S.C. 18 - made in pursuance thereof.

Likewise, even if a defendant was not

aware of certain constitutional assurances afforded him, the trial judge, by virtue of his position and knowledge of the law, is bound by the Constitution to protect and support those laws and procedures which guarantee an accused the right to be tried in a court of law which complies with those well defined laws, statutes and rules enacted by the Congress. This is even more true when a defendant is not represented by counsel.

For a trial judge to ignore these laws or to be ignorant of them is certainly not a valid excuse to proceed in opposition to them, especially when an accused has voiced his expectation that he anticipates the court to remain in obedience to these basic requirements. Petitioners informed the court of their demands in these matters at the very beginning of trial (Trial Transcript, pp. 14-20). Due process ceases to be less than due process when portions of

this procedure are overlooked or intentionally side-stepped.

In the Case of the Petitioners, the District Court either did not know all the applicable rules of criminal procedure, or, for whatever reasons, deliberately chose not to conform to them. Such conduct by the court not only flagrantly offended Petitioners' constitutional right to expect and receive a fair trial, but also suppressed their ability to promote a vibrant defense to the charges against them.

Since it had previously been established that Petitioners were not represented by counsel, and had repeatedly declined the court's offer to have one appointed to them, the Trial Judge should have respected this fact and at that point invoked 18 U.S.C., Rule 17.1, by declining to conduct any pretrial conferences or hear any pretrial motions which may have been requested by the

government. This Rule, pertaining to pretrial conferences and motions, clearly stipulates:

> "This rule shall not be invoked in the case of a defendant who is not represented by counsel." (Appendix, p. 8)

However, the District Court did not abide by Rule 17.1, and consequently by ignoring it brought itself into noncompliance with Rule 57(a):

> "Rules made by district courts for the conduct of criminal proceedings shall not be inconsistent with these rules." (Appendix, p. A 8)

Responding to motions presented to it by the government, the District Court held at least two, and possibly more, pretrial conferences. During these conferences several motions submitted by the government were subsequently approved by the court without consent, knowledge or even presence of the defendants.

Apparently these pretrial meetings were

rather lax in formality. During one particular conference, Trial Judge Marquez acknowledged he had already approved a pretrial motion of the government's and signed the order the week prior to the conference being held to discuss the matter (Transcript of April 20, 1987, p. 2, line 19). The government's motion was submitted and the order signed on April 16, 1987. Yet the hearing wasn't scheduled until the following week, April 20, 1987 (Appendix, p. A 4).

During this same pretrial conference, Judge Marquez quashed Petitioners' subpoenas, ordered defendants' to submit to handwriting exemplars - which were later introduced during testimony at trial - and announced his "play it by ear" proclamation, which seemed to be the dominate theme throughout the course of this affair.

Also, attending the hearing of April 20, 1987 was IRS Special Agent Glenn P. Smith,

who conducted the investigation of the Petitioners and recommended their prosecution. Judge Marquez and Agent Smith, along with U.S. Attorney Cindy Jorgenson, discussed certain events of this Case, but at trial Agent Smith denied several times he had ever attended this particular hearing; Trial Judge Marquez insisted Agent Smith had no knowledge of it; and Attorney Jorgenson even objected to questions relating to it (Trial Transcript, pp. 317-320).

At another pretrial conference conducted just moments prior to trial, and again without Petitioners' approval, the court granted virtually every request presented by the government concerning the exclusion of Petitioners' evidence. The governments pretrial "Motion in Limine: Anticipated Defense Evidence" (Appendix, page A 5), prohibited the introduction of any expert opinion, documentation, judicial decisions, statutes, legal

opinions, IRS Code Sections (even the two sections Petitioners were alleged to have been in violation of were not permitted to be introduced and discussed), tax form instructions, legal dictionaries, or "any testimonial evidence except through defendants regarding defendants' good faith belief."

The District Court's approval of this particular government motion, heard and approved during an unauthorized pretrial conference, effectively gutted any defense the Petitioners may have attempted to present. While the court was gracious enough to permit Petitioners to testify to their "Good Faith" in these matters, any corroboration of this good faith via supporting evidence, witness testimony, documentation, judicial decisions, code regulations or other pertinent evidence was ruled inadmissible. In short, Petitioners could claim they had a

good faith belief in their actions but were denied the opportunity to reinforce the basis of these convictions through the presentation of unfettered testimony or supporting documentation and evidence.

For all practical purposes, the so-called "trial" of the Petitioners could just as easily been held without their presence, and probably would have except the court might have found it a bit awkward explaining to the jury why a criminal trial was being conducted without the accused being present.

Not only is such court behavior a wanton disregard of fairness and justice, but also voids an individual's right to defend himself through constitutionally mandated procedures.

This right has been unequivocally clear by several court decisions. It was held in State v. Tuesno, La., 1982, 408 So. 2d, 1269:

"A trial judge's discretion in

> determining issues of relevancy and competency and in maintaining an orderly presentation of evidence must yield to constitutional right of the defendant to call witnesses and produce evidence in defense to a criminal charge."

This decision reflected the opinion of an earlier case. In Miranda v. Arizona, 384 U.S. 436, it was decided:

> "Where rights secured by the Constitution are involved, there can be no rule-making or legislation which would abrogate them."

Likewise, a citizen of the State of Arizona enjoys near identical constitutinal guarantees. Article II, Section 4 (Due Process of Law) and Section 24 (Rights of Accused in Criminal Prosecutions) both mirror those provisions found in the federal constitution (Appendix, p. A 9).

The above case cites and constitutional references alone lend additional sustenance to the validity of 18 U.S.C., Rules 17.1 & 57, which are rules of criminal procedure

enacted and codified into law by the Congress, thereby taking precedence over any local rules of court which may not be in harmony with them. If this was not true, the judiciary could simply bypass Congress and legislate whatever laws and rules it may desire.

Presently this isn't the situation. The District Court in this Case was not at liberty nor lawfully authorized to conduct any pretrial conferences regarding any motions submitted by the government. And it certainly was not lawfully authorized to approve these various motions if it was not lawfully authorized to hold these meetings in the first place.

In Petitioners' Case, if the District Court was in doubt as to the validity of conducting pretrial conferences, all it had to do was research its own criminal code and rules of procedure. It is available in print

for anyone to read. Petitioners' were of the opinion that Judge Marquez must have been well versed in all the appropriate rules of criminal procedure because he admonished them during their initial appearance that "You are going to have to follow the rules of procedure" (Arraignment Transcript of March 23, 1987, p. 7, line 15).

It is apparent the District Court did not follow its own advice nor comply with 18 U.S.C., Rules 17.1 and 57, thereby inflicting an inordinate amount of prejudice against Petitioners' defense, hence preventing the jury from hearing all the evidence relevant to the issues.

DO PETITIONERS' HAVE THE CONSTITUTIONAL RIGHT TO EXPECT TO RECEIVE A TRIAL IN ACCORDANCE WITH ESTABLISHED RULES OF CRIMINAL PROCEDURE AND DUE PROCESS?

As it is agreed U.S.C. 18 is a constitutionally passed Title, enacted by Congress under its law making powers, then it follows that the provisions contained therein must have been compatible with certain constitutional requirements in order to have been lawfully ratified.

U.S.C. 18, as well as numerous other titles of the United States Code, contain the general and permanent laws of this country. While only about half of the fifty titles of the U.S. Code have been revised, codified and enacted into positive law, with their text being legal evidence of the laws therein contained, the remaining titles, including U.S.C. 26 is only "prima facie evidence" of the laws.

"Prima facie evidence" may suffice for the proof of a particular fact until contradicted and overcome by other evidence.

In State v. Haremza, 213 Kan. 210, 515 P.2d 1217, 1222, it was decided:

> "Prima facie evidence is evidence, which if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue which it supports, but which may be contradicted by other evidence."

In a criminal trial, proof "beyond a reasonable doubt" must be established before a defendant can lawfully be pronounced guilty. If prima facie evidence is introduced into a case at trial, and that evidence can be refuted and contradicted by the introduction of other evidence, then a defendant has the constitutinal right to present such evidence favorable to his defense. The 6th Amendment guarantees this; due process guarantees this; Title 18 guarantees this; and the 9th Amendment guarantees this:

> "Both the concenpt of penumbral guarantees and this amendment (9th) support the existence of rights not explicitly mentioned in the Constitution."
>
> U.S. v. Criden, C.A. Pa. 1982, 675 F.2d 550

However, the District Court in Tucson did not guaranteed this as it had ruled against the introduction of such evidence in pretrial conferences. The Petitioners' did not have the opportunity to refute, by contradicting evidence, the prima facie evidence of the government. Pretrial hearing transcripts and the trial transcript itself will clearly illustrate this. The government's pretrial "Motion in Limine", for all intents and purposes, laid to rest the Petitiners' defense. The charade that followed merely lent a degree of synthetic legitimacy to what was purported to be a bona fied criminal trial.

Petitioners' maintain now, as they have in the past, that they did not receive constitutional due process of law and that they are absolutely entitled to receive this if they are to be lawfully convicted of the charges against them.

"Aside from all else, 'due process'

means fundamental fairness."

Pinkerton v. Farr, W.Va., 220 S.E. 2d 682, 687

From all the above, one can only conclude that the Trial Court did not even attempt to offer fundamental fairness to Petitioners, nor did it have the constitutional option to tamper with Petitioners' rights to due process of law, by either ignoring 18 U.S.C. Rules, quashing Petitioners' subpoenas, or granting pretrial motions during improper pretrial hearings, or preventing Petitioners the opportunity to offer controverting proof to the government's prima facie evidence of alleged Title 26 infractions.

The Justice Department acted incorrectly in bringing criminal charges against the Petitioners and the District Court acted equally erroneously in conducting a criminal trial utilizing equity procedures.

If Petitioners are, indeed, suspected of

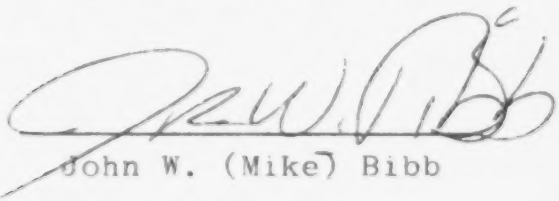
having committed a criminal act against the United States, then they are entitled, as citizens of this country, to be tried in accordance to well defined rules of criminal procedure and due process of law.

Their conviction was the-result of a skillfully orchestrated aberration of this process and by no means could be considered in keeping with these fundamental concepts.

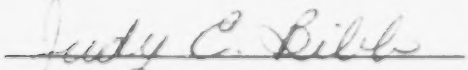
CONCLUSION

Petitioners respectfully submits that this Court should grant certiorari for the reasons set forth herein.

Respectfully submitted,



John W. (Mike) Bibb



Judy E. Bibb

CERTIFICATE OF SERVICE AND OF MAILING

Petitioners hereby Certify that they have this 18th day of November, 1988, forwarded 40 copies of this Petition to the United States Supreme Court by placing copies of same into a properly addressed parcel to:

Clerk of the Supreme Court
of the United States
Supreme Court Building
1 First Street, N.E.
Washington, D.C., 20543

and copies to counsel for Respondent, to wit:

Cindy K. Jorgenson
Assistant U.S. Attorney
Acapulco Building, Suite 310
110 South Church Street
Tucson, Arizona 85701

by depositing same in the United States Mail, first class, this 18th day of November, 1988.

John W. (Mike) Bibb

Judy E. Bibb

A P P E N D I X

26 U.S.C. CODE SEC. 3401

Subchapter A - Withholding from Wages

Sec. 3401. Definitions

(a) Wages.

"For purposes of this chapter, the term 'wages' means all REMUNERATION (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all REMUNERATION paid in any medium other than cash-"

* * * * *

NOTE: This particular Section of the IRS Code plainly indicates that WAGES is defined as being REMUNERATION FOR SERVICES. REMUNERATION means, by dictionary definition, "compensation, recompense, to pay for work or SERVICE." It does not mean INCOME (profit or gain). In fact, the word INCOME is not even used in this Section to describe WAGES.

Petitioners were tried and convicted for failing to file tax forms and evading income taxes on their WAGES. In this Case, the alleged crimes were lawfully impossible!

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	No: 87-1325
	)	87-1326
vs.	)	
	)	DC CR 87-0063
JOHN W. BIBB and JUDY E BIBB,	)	ACM
	)	
Defendants-Appellants.	)	
	)	

APPEAL from the United States District Court for the District of Arizona (Tucson).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Arizona (Tucson) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is AFFIRMED.

Filed and entered August 11, 1988

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	FILED: Oct 3, 1988
Plaintiff-Appellee,	No. 87-1325 87-1326
vs.	
JOHN W. BIBB and JUDY E. BIBB,	DC No. CR-87-0063-ACM
Defendants-Appellants.	ORDER

Before: MERRILL, REINHARDT, and HALL, Circuit Judges

The panel has voted to deny appellant's petition for rehearing. Judges Reinhardt and Hall have voted to reject the suggestion for rehearing en banc and Judge Merrill so recommends.

The full court has been advised of the suggestion of rehearing en banc, and no active judge has requested a vote on whether to rehear the matter in banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, Plaintiff, vs. JOHN W. BIBB and JUDY BIBB Defendants.	)	CR 87-063-TUC-ACM
		ORDER

This court, having considered the government's motion for an order requiring defendants to give handwriting exemplars,

IT IS HEREBY ORDERED that John W. Bibb, and Judy E. Bibb go to the Internal Revenue Service, 300 W. Congress, Suite 2-T and present themselves to Glenn Smith on 4/23/87 at 10:00 AM for the purpose of his giving handwriting exemplars.

IT IS FURTHER ORDERED that the office of the United States Attorney or its designee may thereafter maintain custody of such records, provided that defense counsel is permitted adequate opportunity to inspect and copy such records as required by Rule 16(a)(1)(c), Federal Rules of Criminal Procedure.

Dated this 16th day of April, 1987.

/s/

Alfredo C. Marquez
U.S. District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, Plaintiff, vs. JOHN W. BIBB and JUDY E. BIBB, Defendants.	CR 87-063-TUC-ACM GOVERNMENT'S MOTION IN LIMINE RE: ANTICIPATED DEFENSE EVIDENCE

It is expected that excludable delay under 18 U.S.C. Sec 3161 (h)(1)(F) may occur as a result of this motion or from an order based thereon.

Now comes the United States of America, by and through its undersigned attorneys, and hereby moves, in limine, pursuant to Rule 103 (c), Federal Rules of Evidence, that this Court hold the anticipated defense evidence, described with particularity below, to be inadmissible for any purpose in the trial of the instant case. The United States further moves this Court to instruct defendants, and all witness called by defendants, that use of such evidence, whether through pleadings or other documentary evidence, testimony, remarks, questions or arguments, either directly or in-

directly, is prohibited. The anticipated evidence subject to this motion is as follows:

1. Any evidence that wages do not constitute income, subject to taxation, within the meaning of the Internal Revenue Code.

2. Any evidence which seeks to establish that the income tax laws of the United States are unconstitutional, or that defendants believed in good faith that those laws were unconstitutional. Specifically included within this section is any evidence challenging the process for ratification of the Sixteenth Amendment to the United States Constitution.

3. Any evidence that the Internal Revenue laws and the Sixteenth Amendment do not allow for the direct taxation of wages.

4. Any evidence that "natural persons" are not "persons" required to file income tax returns.

5. Any testimonial evidence, except through defendants, regarding defendants' good faith belief that defendants were not required to file Federal income tax returns.

6. Any evidence or argument on the subject of jury nullification.

7. Any evidence regarding the civil procedures available to the Internal Revenue

Service to collect taxes due and owing the United States by defendants.

8. Any expert opinion, and any documentary evidence including, but not limited to judicial decisions, statutes, regulations, legal opinions, treatises, video or audio tapes, pamphlets, brochures, or other types of documents which relate to a question of law and set forth in items 1 through 7 above.

Accordingly, and for the reasons set forth more fully in the Memorandum of Law in Support, the United States respectfully requests this Court to enter an order granting the instant Motion in Limine.

Respectfully submitted this 22nd day of May, 1987.

/_____

Cindy K. Jorgenson
Assistant U.S. Attorney

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NOTE: District Judge Marquez approved this Motion in Limine the very day of trial, May 27, 1987. This Court Order forbid the introduction of "any evidence", except so-called "good faith belief by defendants", which may have supported Defendants' defense. Hardly in keeping with the definition of "Fair Trial."

U.S.C. 18, RULE 17.1. PRETRIAL CONFERENCE

"At any time after the filing of the indictment or information the court upon motion of any party or upon its own motion may order one or more conferences to consider such matters as will promote a FAIR and expeditious trial. At the conclusion of a conference the court shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or his attorney at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and his attorney. THIS RULE SHALL NOT BE INVOKED IN THE CASE OF A DEFENDANT WHO IS NOT REPRESENTED BY COUNSEL."

NOTE: According to Black's Law Dictionary, Fifth Edition, the legal definition of "Pretrial Conference" is synonymous with "Pretrial Hearing" (Black's, p. 1069).

U.S.C. 18, RULE 57(a). RULES OF COURT

"(a) RULES OF COURTS. Rules made by district courts for the conduct of criminal proceedings SHALL NOT BE INCONSISTENT WITH THESE RULES."

FIFTH AMENDMENT, U.S. CONSTITUTION

No person shall. . .be deprived of life, liberty, or property, without due process of law; nor shall private property (wages) be taken for public use without just compensation.

SIXTH AMENDMENT, U.S. CONSTITUTION

In all criminal prosecutions, the accused shall. . .be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor and to have the assistance of Counsel for his defense.

NINTH AMENDMENT, U.S. CONSTITUTION

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage otehrs retained by the people.

ARIZONA STATE CONSTITUTION, ART. II

Sec. 4. Due Process of Law

No person shall be deprived of life, liberty, or property without due process of law.

ARIZONA STATE CONSTITUTION, ART. II

Sec. 24. Rights of Accused in Criminal Prosecutions

In criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him. . .to testify in his own behalf. . .to have compulsory process to compel the attendance of witnesses in his own behalf. . .